



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

4
Election
Caper
6-8-01

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750, 480

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATION**

PAPER: 3
Group Art Unit:3641

Examiner: Behrend, H.

RECEIVED

JUN 08 2001

TO 3600 MAIL ROOM

This is a continuation of Serial no. 07/ 371,937

Filed: 06/27/89

May 31, 2001

**Applicant's Response To
The Unsigned Office Communication #2**

REMARKS

1. This is Applicant's Response to the Office's Action dated 5/7/01 (Exhibit A, attached) which was an unsigned, but stamped, communication.

2. Applicant thanks the Examiner for the apparent attention to detail. However, the Examiner's response is inconsistent with the Office's previous actions (*infra*). More importantly, the Examiner's response does not comply with several of the Office's rules (also discussed below, and cited previously to Mr. Behrend).

COMMENTS ON MR. BEHREND'S SECOND "FIRST RESTRICTION"

3. Examiner Behrend has requested:

"2. This application contains claims directed to the following patentably distinct species of the claimed invention. Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be patentable. Currently, no claim appears generic.

- I. The embodiment as shown in Fig. 1.*
- II. The embodiment as shown in Fig. 2.*
- III. The embodiment as shown in Fig. 4.*
- IV. The embodiment as shown in Fig. 5."*

[Unsigned Communication From Harvey E. Behrend, 5/7/01]